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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/261,030	03/02/1999	CHRISTOPHER JOEL NACK	RA9-98-072	7234
47052	7590	03/06/2006	EXAMINER	
SAWYER LAW GROUP LLP PO BOX 51418 PALO ALTO, CA 94303			CUFF, MICHAEL A	
			ART UNIT	PAPER NUMBER
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 20060223

Application Number: 09/261,030  
Filing Date: March 02, 1999  
Appellant(s): NACK, CHRISTOPHER JOEL

\_\_\_\_\_  
Joseph Sawyer, Jr.  
For Appellant

**SUBSTITUTE  
EXAMINER'S ANSWER**

This is in response to the appeal brief filed 9/2/03.

**(1) Real Party in Interest**

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

No amendment after final has been filed.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

Appellant's brief includes a statement that claims 2, 5, 6, 8, 9, 10, 11, 15, 16, 18, 19, 20, 23 and 24 "form one group". The examiner interprets this to mean that all the claims stand or fall together.

**(8) *Claims Appealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) *Prior Art of Record***

3,863,245	SWINAMER et al.	1-1975
6,138,105	WALKER et al.	10-2000

**(10) Grounds of Rejection**

Claims 2, 5, 6, 8-11, 15, 16, 18-20 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swinamer et al. in view of Walker et al.

**(11) Response to Arguments**

Sections "A", "B" and the first half of section "C" of appellant's reply (pages 6-9) merely reiterate the application history. Actual arguments start on page 10.

1. Appellant asserts that there is nothing in Swinamer et al., even when taken with Walker, that teaches or suggests the signaling of data from a mobile manager system to a central controller to provide an override signal in response to an override condition occurring in a POS.

The examiner does not concur.

Swinamer et al. shows the old and well-known functions of a retail manager. The examiner has been clear through out prosecution that the management decisions including price information, credit clearance security alerts and other incidents requiring manager's attention were considered to be override details. Per 37 CFR 1.111(b), appellant has never pointed out the error in this interpretation of the prior art nor has contested that these functions were not "override conditions" or "override details".

Appellant has not claimed any specific features of an “override detail” or an “override condition” such that the basic communication between a POS attendant and a manager would not meet the metes and bounds of the claim language as broadly recited.

In response to the limitation “signaling of data from a mobile manager system to a central controller”, by merely improving the communication system of Swinamer et al. with the network system of Walker et al. shown in figure 1, this limitation is met. Column 4, lines 52-62, of Walker et al. specifically states that the input and output devices for server 102 can be a PDA. The examiner believes that server 102, which is linked by network 104 to POS terminals 106, 108 and 110, meets the metes and bounds of the claimed element, “central controller”. The disclosure of the PDA of Walker et al. as an input/output device meets the metes and bounds of the claimed element, “mobile manager system”. “signaling of data” between the two above elements is inherent.

2. Appellant asserts that the manager [of Swinamer et al.] is not taught or suggested as being tied electronically to a point of sale (POS) device/cash register.

This is not a relevant assertion.

First, the term “tied electronically” does not exist in the claims.

Second, the manager to POS terminal communication system has been modified in the rejection.

Third, the Walker et al. reference shows a network connection from its input/output devices to the POS terminals. Even though the Walker et al. reference shows this, note the broadness of the claim language such as "receiving override details at the POS device". This merely limits the receiving to being "at" or near the POS device, not tied electronically or by network.

3. Appellant asserts, on the bottom of page 10, that there is nothing in Walker to teach or suggest that a PDA is used as an input device for signaling to a central controller, and more particularly, for signaling...(total reiteration of assertion number 1.).

The examiner does not concur. See above paragraph 1.

4. Appellant asserts, on the bottom of page 11, that appellant fails to see any teaching or suggestion of the recited use of a mobile manager system to remotely monitor and respond to the plurality of POS systems, the POS system identifying an override condition during a customer transaction and sending data for the override condition to the central controller system, the central controller system transferring the data for the override condition to the central controller system.

The Swinamer et al. reference shows a manager monitoring the whole store including a plurality of POS systems. By utilizing the improved communication system of Walker et al., the combination meets the metes and bounds of the broad limitation,

“utilizing the mobile manager system to remotely monitor and respond to the plurality of POS systems”. This limitation could be met by simply text messaging a POS attendant, via PDA, “do you have enough quarters?” and replying “yes on the quarters. Mr. Smith wants to cash a check for \$40 more than his purchases. Is this OK?”. Manager replies, “Yes on Mr. Smith.”

In reference to the assertion that “the POS system identifying an override condition during a customer transaction and sending data...”, appellant fails to see limitations which are not claimed. There are no claim limitations, which limit the steps of identifying and sending to be done by the POS system. Note that the claim language is so broad that the POS attendant could perform all the steps using the POS system.

5. In appellant’s arguments, filed 1/13/03, appellant failed to see how or why a PDA or wireless management device could or would be used in Swinamer et al. Examiner’s office action, dated 3/24/03, addresses the proper motivation to combine and the high likeliness of success in the response to arguments. Appellant has not shown nor argued any error in the examiner’s response. Therefore, it is assumed that appellant has conceded that the combination of the references is proper.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

*Michael Cuff 2/29/06*  
Michael Cuff  
February 24, 2006

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